

REMARKS

At the time of the Second Office Action dated March 3, 2008, claims 1-33 were pending and rejected in this application.

CLAIMS 1-33 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY KOUZNETSOV ET AL., U.S. PATENT NO. 6,892,241 (HEREINAFTER KOUZNETSOV)

On pages 3-5 of the First Office Action, the Examiner asserted that Kouznetsov discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not been met.

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Claims 1, 18, 20, 26, 31, and 33

Regarding these claims, the Examiner merely cited column 2, lines 15-54 of Kouznetsov. The Examiner also reproduced portions of Kouznetsov corresponding to column 2, lines 27-32 and 49-52. Upon reviewing the Examiner's cited passages, Applicants are unclear as to how Kouznetsov identically discloses all of the claimed limitations. Based upon the Examiner's cited passages, Kouznetsov teaches the unremarkable concept of a client computer 117 having anti-virus software 121 running thereon that loads a virus signature update from a database 122 of a server 114. These teachings, however, do not differ significantly that what was described by Applicants in paragraph [0008] of the "Background of the Invention" section of Applicants' disclosure.

Absent from the Examiner's analysis and from the teachings of Kouznetsov, however, are teachings as to the claim language regarding the configuring of the network interface of the client computer and the client computer communicating only with the fix server. Since the Examiner has failed to establish that Kouznetsov identically discloses these limitations, the Examiner has failed to establish that Kouznetsov is anticipatory prior art within the meaning of 35 U.S.C. § 102.

The dependent claims are allowable over the applied prior art for the same reasons that claims 1, 18, 20, 26, 31, and 33 are allowable over the Examiner's primary reference of Kouznetsov. Applicants, therefore, respectfully solicit withdrawal of all the pending rejections of claims 1-33.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500563, and please credit any excess fees to such deposit account.

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